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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,260

07/24/2003

Sidney M. Weiser

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12/01/2009

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,260	<b>Applicant(s)</b> WEISER ET AL.	
	<b>Examiner</b> Ula C. Ruddock	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 8/13/09 & 11/13/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 18-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 13, 2009, has been entered.
2. The Examiner has carefully considered Applicant's response and accompanying remarks. The previously set forth rejections have been maintained.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1, 3-8, and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohannon, Jr. (US 6,855,650) in view of Lancaster (US 5,849,645) and Martin et al. (US 5,972,463). Bohannon, Jr. discloses a synthetic fiber filled erosion control blanket. The netting and loose fiber filler construction permits blankets or mats of this kind to be fairly light in weight and also to permit the ingrowth of grasses and other vegetation into and through the blanket. The netting primarily serves to hold the loose fiber filler together (col 1, ln 56-61). It should be noted that the Examiner is equating the fiber filler of Bohannon, Jr. to the nonwoven mat of the present invention. The top and bottom sheets generally resemble an open-mesh material or netting and the filler material for use in the erosion control blanket is made up of a plurality of crimped polymer

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fibers which form a three-dimensional matrix between the top sheet and the bottom sheet. The filler material can be made of polyethylene terephthalate (col 2, ln 44-57). The netting is formed of polyethylene, polypropylene, or other suitable polyolefin (col 3, ln 56-59). The PET fibers of the fiber filler have a denier size of about 15-500 (col 5, ln 1-2) and a length of 5.75-6.25 inches (col 6, ln 61-64). The top and bottom sheets are stitched together (col 6, ln 61-62). Bohannon, Jr. discloses the claimed invention except for the teaching that the layers are stitched with a polymer yarn and that the mat comprises tri-lobal polymer fibers.

Martin et al. (US 5,972,463) disclose a web that is used as erosion control or civil engineering matting for retaining soil on embankments, dikes, and slopes and the like to protect them from erosion (col 7, ln 3-5). The multicomponent filaments of this invention can be circular or round in cross section or non-circular or odd in cross section, e.g., lobal, elliptical, rectangular, and triangular (col 5, ln 7-27). More specifically, the cross sections can be trilobal (col 13, ln 64-66). As seen in Figure 14 of Martin et al., the fibers have at least three substantially concave and smoothly curved channels separating at least three substantially convex and smoothly curved lobes, as now required by the present invention. It should be noted that the trilobal fibers of Martin et al. in Figure 14 appear to be structurally similar to the trilobal fibers of the present invention, shown in Figure 3.

Lancaster (US 5,849,645) discloses a reinforced composite matting used for environmental soil erosion control (col 6, ln 28-29). The composite matting includes a bottom netting, fiber matrix, top netting that are secured together by stitching strands made of polyester black thread, thereby sandwiching and trapping the fiber matrix materials there between (col 5, ln 22-32).

It would have been obvious to have used the tri-lobal or multi-lobal fibers of Martin et al. and the polyester stitching thread of Lancaster in the erosion control blanket of Bohannon, Jr., motivated by the desire to create an erosion control blanket that has increased erosion controlling properties, increased soil-cohesion, and increased structural integrity due to the use of the multi-lobal fibers of Martin et al. and the polyester stitching thread of Lancaster.

Regarding Applicant's specific geometry/configuration limitations in independent claims 1 and 18, it is the Examiner's position that although the combination of Bohannon, Jr., Martin et al., and Lancaster fail to disclose the specific geometry/configuration set forth in the claims, it would have been an obvious design choice to one having ordinary skill in the erosion control art to have made a fiber having the claimed specific fiber geometry and configuration, since a change in shape would have been prima facie obvious in the absence of new or unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Furthermore, it should be noted that the transitional phrase "consisting essentially of" only excludes components that will affect the basic and novel characteristics of the invention and the burden is upon Applicant to show that the additional components do affect the basic and novel characteristics of the invention. MPEP 2111.03

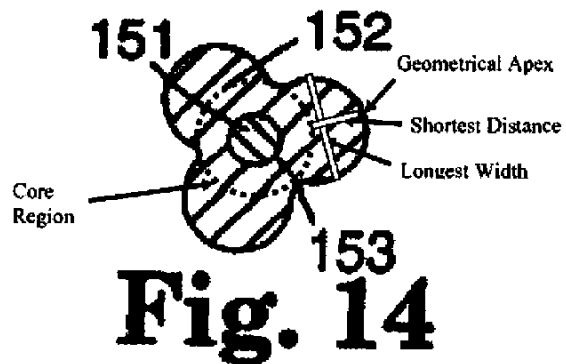
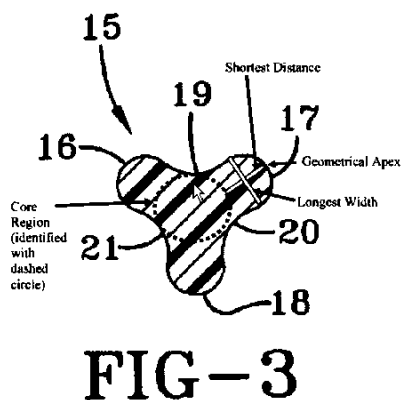
***Rejection is maintained.***

### ***Response to Arguments***

5. Applicant's arguments filed August 13, 2009, and November 13, 2009, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the claimed

invention demonstrates unexpectedly superior results, that the superiority of the mat is unexpected, and that four elements are not taught by any of the applied references

It is the Examiner's position that it would have been an obvious design choice to one having ordinary skill in the erosion control art to have made a fiber having the claimed specific fiber geometry and configuration, since a change in shape would have been prima facie obvious in the absence of new or unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). As seen above in the Martin et al. reference, Applicant was not the first to design a trilobal fiber for use in an erosion control blanket. Applicant's trilobal fiber is shown below (Figure 3) adjacent to the trilobal fiber of the prior art, Martin et al. (Figure 14).



As seen in these representative figures, Martin et al. teaches and/or fairly suggests the basic structure of Applicant's trilobal fibers. Furthermore, absent persuasive evidence that the particular configuration of the claimed geometry of the fiber is significant, a change in the depth or width of the valley in the fiber is an obvious design choice and would not generally affect the

function of the fiber in an erosion control blanket. Applicant has not shown that the specific shape of the claimed trilobal fiber has any criticality.

Applicant has not provided any comparison data in declaration format. As set forth in MPEP 2145:

The arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) (“An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a *prima facie* case of obviousness.”). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

Therefore, the arguments presented by Applicant are not persuasive. Applicant also argues that Martin's filaments are undrawn, whereas the claimed invention filaments are drawn. Applicant also argues that Martin's filaments are durably melt-bonded into a continuous network, whereas the claimed invention has individual strands that are stitched. Applicant also argues that Martin's filaments are continuous unlike the claimed invention where the filaments are cut into strands. Finally, Applicant argues that Martin's surface roughness differs on each side of the entangled web. While these facts regarding Martin may be true, they are not commensurate in scope with the present claims. The present claims do not specify whether that filaments are drawn, whether the filaments are individual stitched strands, whether the filaments are cut into strands, and do not specify the surface roughness of the web. As a result, these arguments are not persuasive. Finally, it should be noted that Applicant appears to arguing each reference separately been held that one cannot show non-obviousness by attacking references individually where, as here, the

rejections are based on a combination of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

As a result, the rejection is proper and maintained.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/  
Primary Examiner, Art Unit 1794